

**AMENDMENT #1
TO THE
PUBLIC PRIVATE PARTNERSHIP AGREEMENT
BY AND BETWEEN
THE CITY OF DORAL
AND
TERRA DORAL COMMONS RESIDENTIAL, LLC
AND
DORAL COMMONS COMMERCIAL, LLC
FOR
DEVELOPMENT OF DORAL GLADES PARK BOARDWALK**

THIS Amendment #1 (the “Amendment”) to the Public Private Partnership Agreement by and between the City of Doral and Terra Doral Commons Residential, LLC and Doral Commons Commercial, LLC for Development of Doral Glades Boardwalk is made and entered into as of the 15 day of January, 2019 (the “Effective Date”), by and among the CITY OF DORAL, a municipality of the State of Florida, the principal and mailing address of which is 8401 NW 53rd Terrace, Doral, FL 33166 (the “City”), Terra Doral Commons Residential, LLC, a Florida limited liability company, the principal and mailing address of which is 2655 South Bayshore Drive, Suite 1020, Miami, FL 33133, and Terra Doral Commons Commercial, LLC, a Florida limited liability company, the principal and mailing address of which is 2655 South Bayshore Drive, Suite 1020, Miami, FL 33133 (collectively, Terra Doral Commons Residential, LLC and Terra Doral Commons Commercial, LLC are referred to herein as “Terra”). City and Terra may be referred to individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, on February 13, 2018, the City Council of the City of Doral approved Resolution #18-25 approving the current Public Private Partnership Agreement between the City of Doral and Terra Doral Commons (the “Agreement”) which requires that Terra bare all costs associated with the design and construction of a boardwalk (the “Boardwalk”) feature in Doral Glades Park (the “Park”);

WHEREAS, following approval of the Agreement, City and Terra engaged in further discussions regarding implementation, which resulted in mutually desired arrangement regarding financial oversight of the Boardwalk;

WHEREAS, this Amendment still requires that Terra bare all costs associated with the design and construction of the Boardwalk and adjacent area but shifts the responsibility to Terra to fully construct the Boardwalk and adjacent area and pay the corresponding Contractors (as defined herein) directly; and

WHEREAS, City and Terra desire to amend the Agreement as stated herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are true, correct, and incorporated herein and made a part hereof by this reference, for the mutual promises specified herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged by the Parties, City and Terra hereby agree as follows:

1. **Amendment**. The Agreement is hereby amended effective as of the date hereof as follows:

a. Section 2(b) is hereby deleted in its entirety and the following is hereby substituted in its place:

2. **Terra Obligations**.

* * *

“(b) Construction.

(i) Upon finalizing the design of the Boardwalk, Terra shall prepare a final cost estimate for construction of same (the “Draft Final Cost Estimate”) and deliver the same to City. City shall have five (5) business days from receipt of the Draft Final Cost Estimate to approve or reject same, which City shall provide notice of in writing to the Terra. If rejected, City shall state its reasons for said rejection and the Parties shall agree to meet and confer regarding the Draft Final Cost Estimate within five (5) business days of Terra’s receipt of City’s rejection (the “Meet and Confer”). Should the Parties fail to reach a mutually acceptable resolution at the Meet and Confer regarding the Final Cost Estimate, the Parties shall, within fifteen (15) business days, obtain two (2) independent cost estimates for said construction (the “Independent Cost Estimates”). Either the approved Draft Final Cost Estimate or, if the Draft Final Cost Estimate is rejected by City, the lower of the Independent Cost Estimates, shall serve as the basis for the “Construction Sum”, the final approved Construction Sum being attached hereto as Exhibit “C” and incorporated herein.

(ii) Following approval of the Construction Sum, and the satisfaction of any relevant conditions, Terra shall secure within fifteen (15) days thereof a subdivision improvement performance bond, in substantially the same form as Section 00614 attached hereto and made a part hereof, which shall cover Terra’s performance of its obligations under the Agreement, as amended by this Amendment (the “Performance Bond”).

The Performance Bond shall have a penal sum in the amount 100% of the Construction Sum, shall be executed by a surety that is licensed in the State of Florida (the "Surety") and shall remain in effect as required by law. City shall be the obligee on the Performance Bond and the Performance Bond shall display the Surety's bond number, and attach a rider containing the following provisions:

- (1) the Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Agreement. Any other addition, alteration, change, extension of time, backcharge, or other modification of the Agreement, or forbearance on the part of either City or Terra to the other, shall not release the Surety of its obligations hereunder, and notice to the surety of such matters is hereby waived;
- (2) the Surety hereby stipulates and agrees that the obligation of the Surety and its Performance Bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Agreement or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any work to be performed or any moneys due or to become due thereunder. The Surety expressly consents to the payment provisions as provided in this Agreement; and
- (3) the Surety hereby agrees that if, after the Notices to Terra and the Surety required under the Performance Bond, Terra and the Surety do not cure the default as provided in this Section, then the Surety, in addition to Terra, without the need for City to terminate Terra, shall be liable to City for any damages City may sustain and be entitled to pursuant to the Plans and the Performance Bond. No further Notices shall be required by City.

In any event, even if the Surety fails to include such language in its Performance Bond, by incorporating this Agreement into the Performance Bond furnished for this Boardwalk, Terra agrees to the provisions of this

Section. If Terra fails to perform any of its obligations under the Agreement and the Amendment, including, without limitation, timely performance under the Agreement and this Amendment, City shall give Terra and the Surety a seven (7) calendar day Notice of Default. After receipt of the seven (7) calendar day Notice of Default provided herein, Terra and Surety shall have the right and opportunity to commence and continue to cure the default(s). If, after the seven (7) calendar day Notice of Default, Terra and Surety do not commence and/or make reasonable progress to cure the default as provided in this Section, then Surety, in addition to Terra and without the need for City to terminate Terra, shall be liable to City for any damages City may sustain and be entitled to pursuant to this Amendment and the Performance Bond. No further Notices shall be required by City.

(iii) Terra shall be required to require its contractors and subcontractors to obtain and maintain, such insurance as may be required by City's risk management division, which shall be no less than industry standard for the scope of the Boardwalk.

(iv) Terra shall enter into one or more contracts (the "Construction Contracts") with licensed contractors, as appropriate and applicable (each, a "Contractor") for the performance and completion of all work associated with the construction of the Boardwalk in accordance with those certain permitted plans (the "Plans") containing the specifications for the Boardwalk and the requirements of the Agreement and this Amendment (the "Work"). The Work shall be at no cost to City. Terra shall pay the entire Construction Sum including any required building permits, other permits, and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. Terra shall require each Contractor to issue a Performance Bond, by a surety that is licensed in the State of Florida, covering such Contractor's performance of its respective Construction Contract (each, a "Contractor Bond"). Each Contractor Bond must have a penal sum in the amount of the value of the corresponding Construction Contract and include a rider that adds City as an obligee on the Contractor Bond. Before commencement of the Work, Terra shall furnish to City a "Project Schedule," attached hereto as Exhibit "D" and incorporated herein, which shall dictate the timing, phasing, and progress of the construction of the Boardwalk; it being understood that the Project Schedule must provide for final completion of the Boardwalk to occur on the later of the following: (i) June, 30, 2019, or (ii) the anticipated date of completion of the Park. The Project Schedule may be equitably adjusted

from time to time as provided herein. Time is of the essence. Terra shall require Contractor(s) to adhere to the Project Schedule and Terra shall use commercially reasonable efforts to cause the completion of the Boardwalk as provided herein, in accordance with the Project Schedule. If construction of the Boardwalk is delayed or impacted as a result of Force Majeure (as defined herein), then the Project Schedule shall be equitably adjusted. For purposes of this Agreement, the term "Force Majeure" shall mean any event, circumstance or condition which is beyond the control and without the fault or negligence of Terra, including, but not limited to, any regulations, order or instruction of any federal, state or municipal government or any department or agency thereof, acts or omissions of City, acts of civil or military authority, fires, strikes, embargoes, war, terrorism, riots, earthquakes, invasion, rebellion, insurrection, acts of God, flood, or other natural disaster, rain, snow, or other inclement weather, labor disputes, or industrial disputes, any moratorium on construction, unavailability of power or other utilities, material shortages or the inability to obtain necessary labor or materials. No changes to the scope of the Boardwalk beyond the Plans and Construction Sum are permitted except with the express written consent of City, which may be given or withheld in City's absolute discretion.

(v) Terra, as soon as practicable after execution of the Agreement and before Work commencement, shall furnish in writing to City, the names of each Contractor for each portion of the Work. Terra shall not contract with any Contractor to whom City has made a timely and reasonable objection. Terra shall require each Contractor to coordinate its Work with that of all others under its control or City's control working on or supplying the Boardwalk. Each Contractor shall be responsible for coordination, locations, and routing of all material and equipment as agreed to by City. In areas and locations where the proper and most effective location and routing cannot be made as indicated or coordinated, Terra shall require each Contractor to contact City in writing and meet with all others involved before proceeding with installations, to plan the most effective and efficient method of overall installation. City may, upon reasonable notice to Terra and Contractor(s), inspect the Work to ensure compliance with the Plans.

(vi) If Terra fails to cause correction of the Work that is not in accordance with the Plans, after receiving written notice thereof and reasonable opportunity to cause the correction of the Work under the

circumstances, then City may issue a written order to Terra to stop the Work, or any portion thereof, until the correction is made.

(vii) It is recognized that City has engaged Pirtle Construction, Inc., a Florida corporation (“Pirtle Construction”), to construct the Park and that Terra is responsible to cause the construction of one element of the Park; to wit, the Boardwalk. City reserves the right to perform construction or operations related to the Park with City’s own forces or Pirtle Construction, and to award separate contracts in connection with other portions of the Park, which may be adjacent, abutting or in the Boardwalk area. Terra shall require each Contractor to coordinate and cooperate, with City’s own forces and separate contractors employed by City.

(viii) Terra shall include provisions in each Construction Contract that provide that: (1) City is an express and intended third-party beneficiary of such Construction Contract; and (2) each Contractor warrants to Terra and City that (a) the materials and equipment furnished under the Construction Contract will be new and of good quality unless otherwise required or permitted by the Plans, (b) the Work will be free from defects not inherent in the quality required or permitted, and (c) the Work will conform to the requirements of the Construction Contract and the Plans. If any material or equipment warranties are required by the Plans, then Terra shall cause such warranties to be issued in the name of City or be transferred to City. Terra shall obtain warranties from all Contractors and subcontractors that commence upon substantial completion of the Boardwalk for a period of one (1) year. These warranties are not in lieu of, but are in addition to any other warranties, express or implied, which may be provided by law and by Contractors. Terra shall provide to City all original warranties and guarantees it receives from all Contractors in connection with the Boardwalk, together with any other warranties and guarantees required by the Plans. As an express condition precedent to completion of the Work, Terra shall provide to City one (1) bounded copy of: (i) all fully executed Contractor warranties; and (ii) a list of all Contractors who performed Work on the Boardwalk or who furnished materials for use in the Boardwalk, such list to include the business name, address, telephone number, email address and the name and complete contact information for all responsible persons at all such entities.

* * *

2. Except as expressly amended or modified by the terms of this Amendment, all terms of the Agreement as amended by this Amendment shall remain in full force and effect. In the event of a conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall prevail and control.

3. The provisions of the Agreement, as amended by this Amendment, including the recitals, comprise all of the terms, conditions, agreements, and representations of the Parties with respect to the subject matter hereof.

4. This Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

5. Each Party represents and warrants that the representative signing this Amendment on its behalf has all right and authority to bind and commit that Party to the terms and conditions of this Amendment.


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[SIGNATURE PAGES FOLLOW]

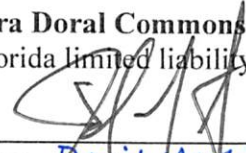
IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the Effective Date.


Witnessed by:

TERRA:


Name: MICHAEL P. PIAZZA

Terra Doral Commons Residential, LLC,
a Florida limited liability company


By: 
Name: David Martin
Title: Manager


Name: BETSY MORALES

Address: 2665 S. Bayshore Drive, Suite 1020
Miami, Florida 33133

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE) SS:

The foregoing instrument was acknowledged before me this 15 day of January, 2019 by David Martin as Manager (office-held) of Terra Doral Commons Residential, LLC who is personally known to me or produced _____ as identification.


Name: Sandra Ramos
Notary Public State of Florida
Commission No.: FF946922

My commission expires:

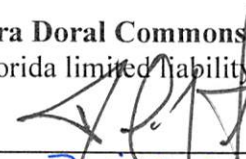



Witnessed by:

TERRA:


 Name: MICHAEL P. PIAZZA

Terra Doral Commons Commercial, LLC,
a Florida limited liability company


By: 
 Name: David Martin
 Title: Manager


 Name: BETSY MORALES

Address: 2665 S. Bayshore Drive, Suite 1020
Miami, Florida 33133

STATE OF FLORIDA)
)
 COUNTY OF MIAMI-DADE)
) SS:

The foregoing instrument was acknowledged before me this 15 day of January, 2019 by David Martin as Manager (office-held) of Terra Doral Commons Commercial, LLC who is personally known to me or produced as identification.


 Name: Sandra Ramos

Notary Public State of Florida
 Commission No.: FF946922

My commission expires:




Attest:




Connie Diaz, CMC, City Clerk
MMC

CITY OF DORAL:

By: 

Albert P. Childress, Acting City Manager
Date: Feb 5, 2019

Approved as to form and legal sufficiency for the use
and reliance of the City of Doral only:



Luis Figueredo
City Attorney

EXHIBIT "C"

Construction Sum

General Conditions	\$87,000.00
Landscaping	\$70,000.00
Boardwalk	\$370,000.00
Electrical	\$95,000.00
Fee	\$56,000.00
Bond	\$11,500.00
Insurance	<u>\$6,900.00</u>
Total	\$696,400.00

EXHIBIT "D"

Project Schedule

<u>Activity</u>	<u>Calendar Days</u>
Test Piles	14 Days
Pile Install	75 Days
Electrical	30 Days
Landscaping	21 Days
Total Duration	119 Days

RESOLUTION No. 18-25

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE A PUBLIC PRIVATE PARTNERSHIP AGREEMENT WITH TERRA DORAL COMMONS, IN SUBSTANTIALLY THE FORM PROVIDED, FOR THE ENHANCEMENT OF A LAKEFRONT BOARDWALK AMENITY AT DORAL GLADES PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, CREATE THE NECESSARY DEPOSIT ACCOUNTS, AND EXPEND RECEIVED FUNDS IN FURTHERANCE HEREOF; AUTHORIZING THE CITY MANAGER TO INCREASE THE GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION OF DORAL GLADES PARK BY THE CORRESPONDING AMOUNT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Doral (the "City") developed Doral Glades Park (the "Park") as a place in which the community can gather to enjoy nature in a safe environment that is representative of the beautiful City of Doral. Covering roughly 25 acres, the Park will be located on NW 74th Street between NW 97th Avenue and NW 104th Avenue, will encourage conservation and outdoor recreation, and include amenities such as: viewing platform, fishing pier, kayak launch, educational boardwalk, nature center, interpretive signs, and native plantings; and

WHEREAS, during the final design phase of the project, the City was approached by Terra Doral Commons ("Terra") with the idea of partnering to improve the design of the Park with the purpose of developing a lakefront boardwalk amenity within the park. After conversations with City staff, Terra developed a conceptual site plan design for the boardwalk along the south side of the lake (the "Boardwalk"); and

WHEREAS, the proposed Public Private Partnership Agreement between the City and Terra, in substantially the form attached hereto as Exhibit "A" (the "P3 Agreement"),

would require that Terra bare all costs associated with the design and construction of the Boardwalk and adjacent area. This includes any costs incurred associated with the design and construction coordination by the City's design team and contractor to execute the Boardwalk work; and

WHEREAS, the City previously entered into a similar arrangement with Millenia Atlantic University ("MAU") to enhance a green space at the Police substation into a pocket park. There, MAU similarly provided the funds for design and construction of the enhancement and the City folded the new scope of work into its agreement with the project contractor; and

WHEREAS, funds received from Terra for this work will be deposited into an account and utilized to pay the City's design team and contractor to execute the work.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

Section 2. Approval. The Public Private Partnership Agreement for the enhancement of a lakefront boardwalk amenity at Doral Glades Park between the City and Terra, in substantially the form attached hereto as Exhibit "A", which is incorporated herein and made a part hereof by this reference, is hereby approved, subject to such non-material changes as may deemed necessary by the City Manager to further the interests of the City and approval by the City Attorney as to form and legal sufficiency.

Section 3. Authorization. The City Manager is hereby authorized to finalize and execute the P3 Agreement with Terra. This Authorization does not create or confer

any rights to Terra Doral Commons. The City Manager is further authorized to create the necessary financial accounts to receive and expend funds in furtherance hereof.

Section 4. Construction Budget. The City Manager is further authorized to execute documents to increase to the Guaranteed Maximum Price for the construction of Doral Glades Park by the corresponding amount necessary to complete the boardwalk improvement contemplated in the P3 Agreement, acknowledging that same is being paid directly to the City by Terra.

Section 5. Implementation. The City Manager and the City Attorney are hereby authorized to take such action as may be necessary to implement the provisions of this Resolution.

Section 6. Effective Date. This resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Mariaca who moved its adoption. The motion was seconded by Vice Mayor Rodriguez and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Ana Maria Rodriguez	Yes
Councilman Pete Cabrera	Yes
Councilwoman Christi Fraga	Yes
Councilwoman Claudia Mariaca	Yes

PASSED AND ADOPTED this 13 day of February, 2018.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, CMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.
CITY ATTORNEY